

**Restructuring in the Rearview Mirror – a 10-Year Retrospective of California’s
Doomed Experiment with Electric Deregulation. By The Energy Overseer
Courtroom 22 Coverage of the PG&E Bankruptcy**

CPUC Responds to PG&E Motions by Asking for Dismissal

The California Public Utilities Commission this week told the US Bankruptcy Court that it should reject and dismiss Pacific Gas & Electric’s motion for a stay of recent regulatory orders that would force the utility to restate transition balancing accounts.

In two related filings made April 30, the CPUC argued that it holds a regulatory exemption to actions by the bankruptcy court and that court interference with its utility oversight powers would be harmful to consumers and the public interest. “

If the commission is stripped of its regulatory functions, particularly in this time of crisis, the harm to the state could potentially be devastating,” the CPUC wrote. “On the other hand, the harm to PG&E from the commission’s adoption of the accounting change is negligible. At most, PG&E is inconvenienced by having to restate certain balancing accounts.”

In addition, the agency claimed an exemption from court action to impose a stay. “PG&E brings this adversary proceeding in the teeth of the sovereign immunity of the state of California, which absolutely bars the proceeding,” the CPUC said. It also cited Section 362(b)(4) of the US Bankruptcy Code, “which expressly exempts the exercise of a state’s ‘police or regulatory power’ from the reach of the automatic stay, which is squarely applicable here.”

The CPUC told the court that PG&E has other administrative venues for appeal of the regulatory orders, including petitions for rehearing, which the utility filed on April 27.

While the PG&E motion for injunctive and declaratory relief is focused on the accounting order, how the judge deals with jurisdictional issues will be of major interest for future matters, such as the possibility that he might require higher rates to allow PG&E to recapture undercollected costs of power purchases. There continues to be heated debate in the legal community about the extent of the judge’s power to order rate hikes or to approve a reorganization plan that seeks revenue increases.

The court has set a status conference on the motion for May 14 at 9:30 am [Arthur O’Donnell].

Creditors’ Committee Hears All About Edison MOU

At the request of the Department of Water Resources and advisors to Governor Gray Davis, members of the unsecured creditors’ committee in Pacific Gas & Electric’s Chapter 11 case on April 25 listened to a presentation about Davis’ memorandum of understanding with Southern California Edison for the sale of transmission assets and associated financial arrangements. The session for the most part presented the same analysis of the MOU that Davis has been pitching to legislators to win approval.

In this case, Davis seemed to be angling to win allies in his effort to get PG&E to enter a similar agreement.

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In contrast to statements from the governor and subsequent media reports, however, the creditors’ committee members did not ask for the meeting and currently have no intentions of pressing for PG&E to sell anything.

“Our group has not made any decisions,” emphasized Paul Aronzon, lead attorney for the committee from the firm Milbank Tweed Hadley & McCloy. “We’ve only been at this three weeks.”

Aronzon dismissed suggestions that the committee might try to force a sale to generate funds to pay off creditors. “There are only two ways that assets can be liquidated, and both require an order from the court,” he explained. In one case, the company might petition for a sale of assets as part of continuing business operations. The other is as part of a plan of reorganization.

Within the first 120 days after its filing under Chapter 11, the company--or “debtor in possession”--has an exclusive right to file a reorganization plan. Only under extraordinary circumstances, such as cases involving fraud or serious mismanagement, might creditors petition the court to change the exclusivity period.

PG&E is expecting to file its proposed plan by early August, and “the company has told us they want to present concepts for a plan shortly,” Aronzon said.

The committee has undergone a few changes in membership since it was first created. US Bank, which is owed \$310 million by PG&E, has been deemed to have a secured interest, said attorney Keith Marshall. That puts the bank among those first in line for full recapture of outstanding bills. Morgan Guarantee Bank has been chosen to take its place.

There was also a switch in representatives of power suppliers, with PE-Berkeley, Inc. recently taking the place of KES Kingsburg. Both companies are relatively small qualifying facilities.

The court has scheduled a meeting for unsecured creditors on June 7, 9:30 am, at the Hastings College of Law in San Francisco **[Arthur O’Donnell]**.

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